

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Request for Review of Decisions of the
Universal Service Administrator by

Ben Hill County Schools

)
)
) CC Docket No. 02-6
)
)
)

) File No. SLD Form 471 No. 868208
) FRN 2366566 (FY 2012)
)

To: Chief, Wireline Competition Bureau

REQUEST FOR REVIEW

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Dated: June 22, 2016

TABLE OF CONTENTS

SUMMARY.....	i
I. STATEMENT OF BEN HILL’S INTERESTS IN THE APPEAL	1
II. KEY BACKGROUND FACTS.....	2
A. The Application, Commitment and Project Completion	2
B. The VBrick System and the Role of the Set Top Boxes	2
C. USAC’s Payment Quality Assurance Review.....	3
D. USAC’s Recovery Letter.....	4
E. Ben Hill’s USAC Appeal	4
F. The USAC Denial.....	5
III. STANDARD OF REVIEW	5
IV. ARGUMENT.....	6
A. Ben Hill Will Reimburse E-Rate Program Support For Set Top Boxes.	6
B. Ben Hill Cannot Be Required To Reimburse E-Rate Support For Operating VBrick System.....	7
V. CONCLUSION AND REQUEST FOR RELIEF	8

SUMMARY

Ben Hill County Schools (“Ben Hill” or “County”) sought and received FY 2012 E-Rate Program support to acquire and install a VBrick System (“System”) which allows the delivery of stored educational video content to each classroom and public areas of the Ben Hill County Elementary School (“School”) library. As part of the System the County acquired forty (40) set top boxes (“STB”), which would allow in classroom connectivity to stand-alone devices (e.g., televisions and projectors). The System was installed and has been in use since September of 2014. However, due to the County’s decision to install white boards in the classrooms for use with the System, the STBs were not connected to stand-alone devices in the classrooms, but remain available on an as-needed basis.

After a Payment Quality Assurance review, USAC sought recovery of almost all of the \$137,315.34 in Program support disbursed for the System (i.e., \$130,439.61) because the STBs were not actually installed. USAC reasoned that because the STBs were not installed, the “remaining parts of the VBRICK video streaming equipment cannot be properly utilized.”

Ben Hill appealed that decision to USAC, indicating that it would return the E-Rate Program support associated with the STBs (\$24,516.00), but should not be required to reimburse the balance of the funds sought by USAC. The School was using the System as planned and approved. USAC denied that appeal, merely reciting the explanation it employed for originally seeking return of the funds as “improperly disbursed.”

Ben Hill, as is its right, hereby appeals the USAC denial to the Commission. Again, it is prepared to reimburse USAC for the E-Rate Program Support associated with the STBs. However, since the System’s timely installation, any device able to be connected to the County’s local area network in the classroom and elsewhere (e.g., white boards, desktop computers, laptop computers, personal electronic devices) have been able to use – and have been using – the System to stream

video when needed, exactly as intended and approved as part of the project. Thus, the System has in fact been used in accordance with E-Rate Program rules and as originally intended, even though the STBs were not installed with in-classroom televisions or projectors. Contrary to USAC's claims, Ben Hill "secured all necessary resources to make effective use of the [VBrick System] equipment and that ... equipment is [being] utilized for educational purposes." Therefore, the Commission should instruct USAC to cease efforts to recover the balance of the E-Rate Program support (i.e., \$105,923.61) disbursed for the System.

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In the Matter of

Request for Review of Decisions of the
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File No. SLD Form 471 No. 868208
FRN 2366566 (FY 2012)

To: Chief, Wireline Competition Bureau

REQUEST FOR REVIEW

This is a request for review (“Appeal”), filed on behalf of Ben Hill County Schools (“Ben Hill” or “County”), of a May 2, 2016 decision of the Schools and Libraries Division of the Universal Service Administrative Company (collectively, “USAC”) denying the County’s appeal to USAC of a Notification of Improperly Disbursed Funds Recovery Letter (“Recovery Letter”), dated February 17, 2016 (“USAC Denial”).¹

I. STATEMENT OF BEN HILL’S INTERESTS IN THE APPEAL

Ben Hill has standing to file the Appeal because Section 54.719(b) of the Commission’s rules provides that “[a]ny party aggrieved by an action taken by the Administrator, after seeking review from the Administrator, may then seek review from the Federal Communications Commission...”²

In this case, Ben Hill is directly aggrieved by USAC’s Recovery Letter and Denial and its continued

¹ A copy of the Ben Hill appeal to USAC, including the Recovery Letter, is Attachment I (“USAC Appeal”). A copy of the USAC Denial is Attachment II.

² 47 C.F.R. § 54.719(b).

effort to recover previously- approved E-Rate Program funds expended in accordance with that approval.

II. KEY BACKGROUND FACTS

A. The Application, Commitment and Project Completion

By FCC Form 470 (80793000102782) dated February 13, 2012, the County sought as Priority 2 Internal Connections one VBrick Video Distribution System (“VBrick System” or “System”) for installation at Ben Hill County Elementary School (“School”). The County’s Form 471 No.868208, as finalized, included a total funding pre-discount amount of \$152,572.60 for the System. Qualifying for a 90% discount, the final funding commitment request was \$137,315.34; as a result, the County’s 10% share of the overall project cost was \$17,366.66. The relevant Item 21 Attachment reflected that the pre-discount amount for the System included \$27,240.00 (\$24,516.00 post-discount) for 40 multi-format set top boxes for decoding video available through the System so that it could be displayed on “plasmas, LCDs, and televisions” (“STB”).

On July 25, 2013, USAC approved a funding commitment in the amount of the final request, with the last allowable date for completion of installation of September 30, 2014. The County timely filed its Form 486 Notification reporting an earliest service start date of August 1, 2014. Delivery, installation and operational status of the VBrick System by Micro Technology Consultants, Inc. (“MTC”) were completed at the School by September 30, 2014. The County paid its non-discounted share of the project cost in full.

B. The VBrick System and the Role of the Set Top Boxes

The approved VBrick System allows the delivery of stored educational video content to each classroom and public areas of the School library. Students and faculty can view the content on desktop computers and other in-classroom viewing technologies, such as whiteboards, connected

directly to the School's Local Area Network ("LAN"). The System also facilitates delivery of the same video content to any wireless device connected to the LAN, including laptop computers and personal electronic devices. Upon the System's installation, the necessary channels and video materials were loaded to allow access to the video content and it became operational. Ben Hill's use of the System for such in-classroom educational purposes continues today.³

The STBs, which are movable devices that need not be permanently installed, but remain available to be connected on an as-needed basis, would allow the connection to the System of non-networked devices, such as television sets or projectors located in the individual classrooms. The STBs are a peripheral device to the System. The connection of the STBs to non-networked televisions or projectors is not required for the System to function and serve the primary purpose for which it was sought and approved as an eligible Priority 2 Internal Connection – delivering video content to the classroom.

C. USAC's Payment Quality Assurance Review

On January 28, 2015, USAC initiated a Payment Quality Assurance ("PQA") program review of SLC Invoice No. 2115218, which had been disbursed to MTC on December 18, 2014, in the amount of \$137,315.34 (Case ID: SL-2104-12-Case-405) for the System. Ben Hill cooperated fully with the review, including the April 15, 2015 onsite visit by PQA auditors. During that visit, the auditors found that the 40 STBs in inventory were not located in the classrooms and connected to devices using the VBrick System. Upon further PQA inquiry regarding the STBs, in January of 2016 Ben Hill explained the non-essential, optional role of the devices in the operation of the System.⁴

³ See Statement of Matt Smith, Technology Director, Ben Hill County Schools, and accompanying photographs, at Attachment III.

⁴ See Exhibit 2 to Attachment I.

D. USAC's Recovery Letter

On February 17, 2016, USAC issued the Recovery Letter, which included the following explanation:

“During a Payment Quality Assurance (PQA) review, it has been determined that funds were improperly disbursed for this funding request. The equipment for which you requested discounts has not been utilized in accordance with program rules. FCC rules require that applicants have secured all necessary resources to make effective use of the equipment and that the equipment is utilized for educational purposes. 40 Set top boxes-8000-0113/VB-IPR-WM SET TOP BOX were not in use and due to set top boxes not being installed it was determined that the remaining parts of the VBRICK video streaming equipment cannot be properly utilized. Since the review has revealed that equipment has not been utilized according to program rules, USAC will seek recovery of all funds improperly disbursed that are associated with the equipment not being utilized. Accordingly, USAC will seek recovery of \$130,439.61 of improperly disbursed funds from the applicant.”

E. Ben Hill's USAC Appeal

In the USAC Appeal, Ben Hill conceded that that the STBs were not deployed for the purpose for which they were ostensibly to be used – to connect televisions or projectors in individual classrooms to the VBrick System. The STB's are currently located in the School's Media Center and could be “checked out” in the event that they were needed, were non-networked devices like individual televisions in the classroom to be deployed. Ben Hill indicated that it would reimburse USAC for the E-Rate support provided for the STBs – a total of \$24,516.00.

However, because the VBrick system had been and was being used for the purpose for which it was originally sought, Ben Hill appealed the requirement to reimburse the entire amount of disbursed pursuant to the FRN (i.e., \$130,439.61).

F. The USAC Denial

The USAC Denial simply repeated verbatim the Recovery Letter explanation as follows:

“The record shows that during a Payment Quality Assurance (PQA) review, it was determined that funds were improperly disbursed for this funding request. The equipment for which you requested discounts has not been utilized in accordance with program rules. FCC rules require that applicants have secured all the necessary resources to make effective use of the equipment and that the equipment is utilized for an educational purpose. 40 Set top boxes - 8000-0113/VB-IPR-WM SET TOP BOX were not in use and due to set top boxes not being installed, it was determined that the remaining parts of the VBRICK video streaming equipment cannot be properly utilized. Since a review has revealed that equipment has not been utilized according to program rules, USAC will seek recovery of all funds improperly disbursed that are associated with the equipment not being utilized. Accordingly, USAC will seek recovery of \$130,439.61 of improperly disbursed funds from the applicant. In your appeal, you did not demonstrate that USAC’s decision was incorrect. Consequently, your appeal is denied.”

USAC provided no other explanation or rationale for its Denial and did not address the various points made by Ben Hill in its USAC Appeal.

III. STANDARD OF REVIEW

USAC’s authority to administer the E-Rate Program is limited to implementing and applying the *Commission’s rules and the Commission’s interpretations of those rules* as found in Commission decisions and orders.⁵

USAC is not empowered to make policy, interpret any unclear provisions of the governing statute or the rules promulgated by the Commission,⁶ or create the equivalent of new guidelines.⁷ USAC is responsible for “administering the universal support mechanisms in an efficient, effective,

⁵ 47 C.F.R. § 54.702(c).

⁶ *Id.*

⁷ *Changes to the Board of Directors of the Nat’l Exchange Carrier Ass’n, Inc.*, Third Report and Order, 13 FCC Rcd 25058, 25066-67, ¶¶15-16 (1998).

and competitively neutral manner.”⁸ In connection with efforts to recover previously approved E-Rate support, USAC has the burden of acting in a timely manner to recover and demonstrating that there has been a statutory or substantive rule violation.⁹ Finally, the Commission’s review of the USAC Denial is *de novo*, and the agency is not bound by any findings or conclusions of USAC.¹⁰

IV. ARGUMENT.

A. Ben Hill Will Reimburse E-Rate Program Support For Set Top Boxes.

Ben Hill concedes that the STBs were not deployed for the purpose for which they were ostensibly to be used – to connect televisions or projectors in individual classrooms to the VBrick System. The STB’s are currently located in the School’s Media Center and could be “checked out” in the event that they were needed, were non-networked devices like individual televisions in the classroom to be deployed.

Ben Hill’s use of the STBs in this fashion is not the result of any intentional violation of the E-Rate Program rules. The County’s plans for in-classroom viewing technologies evolved and a decision was made to install white boards in the classrooms, as opposed to continuing to rely on older technologies. All classrooms contain these more up-to-date alternatives. As a result, the STBs ultimately were not required to allow the VBrick System to perform its functions in the classroom – the educational video content from the System could be delivered through network connected devices. Clearly, there could have been closer coordination between the County’s technology deployment decisions and the acquisition of peripheral devices (e.g., the STBs) for the VBrick System. During the year between the grant of the funding commitment in July of 2013 and the installation of the VBrick System starting in August of 2014, there were personnel transitions at Ben

⁸ 47 C.F.R. § 54.701(a).

⁹ See *In the Matter of Schools and Libraries Universal Service Support Mechanism*, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15813 and 15819, ¶¶15, 32 (2004) (“*Fifth Report and Order*”).

¹⁰ 47 C.F.R. § 54.723.

Hill and the change from an internal technology department to an outside vendor that affected this issue.

Again, although the STBs are still available on an “as-needed” basis, based on the technologies now used in the School’s classrooms, Ben Hill is prepared to reimburse USAC the full amount of the disbursed support related to the 40 STBs (\$24,516.00).

B. Ben Hill Cannot Be Required To Reimburse E-Rate Support For Operating VBrick System

However, USAC goes further and seeks to an additional \$105,923.61 (the bulk of the funds disbursed under the FRN for the VBrick System), on the grounds that absent the use of the STBs “the remaining parts of the VBRICK video streaming system cannot be properly utilized.” This conclusion is a false premise and does not reflect reality.¹¹

Since the System’s timely installation, any device able to be connected to the County’s LAN network in the classroom and elsewhere (e.g., white boards, desktop computers, laptop computers, personal electronic devices) have been able to use – and have been using – the System to stream video when needed, exactly as intended and approved as part of the project. Thus, the System has in fact been used in accordance with E-Rate Program rules and as originally intended, even though the STBs were not installed with in-classroom televisions or projectors.

Under such circumstances, it is appropriate for USAC to recover the E-Rate Program support relating to the unused STBs (i.e., the amount “associated with the equipment not being utilized”). However, Ben Hill respectfully submits that it is not appropriate or required by the E-Rate Program rules to recover support relating to equipment purchased, installed and being used as planned. *In the Matter of Request for Review of a Decision of the Universal Service Administrator by Kearney*

¹¹ See Exhibit 2 to Attachment I, Attachment III.


Public Schools, Order, 27 FCC Rcd 6194, 6196 ¶4 (Telecom Access Pol. Div. 2012), the FCC ruled that Kearney, in the face of a COMAD letter, was entitled to retain E-Rate Program support for approved switching equipment that Kearney had in fact purchased and installed, while returning funds related to other equipment and support not purchased.¹² This conclusion is equally applicable to this case regarding the functioning VBrick System versus the STBs. Contrary to the Recovery Letter Explanation and USAC Denial, Ben Hill “secured all necessary resources to make effective use of the [VBrick System] equipment and that ... equipment is [being] utilized for educational purposes.”

V. CONCLUSION AND REQUEST FOR RELIEF

Ben Hill respectfully submits that there is no basis for recovery of any disbursed E-Rate Program support other than the \$24,516.00 associated with the STBs which were not in use. The County is prepared to reimburse USAC that amount. The USAC’s effort to recover the balance of the amount disbursed (\$105,923.61) should be rescinded and the County should be permitted to retain that amount in full.

Respectfully submitted,

Ben Hill County Schools



Paul C. Besozzi
Squire Patton Boggs (US) LLP
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(202) 457-5292

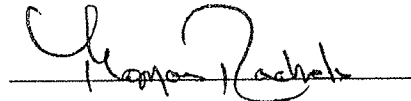
Counsel for Ben Hill County Schools

¹² See also *In the Matter of Request for Review of a Decision of the Universal Service Administrator by Mercury Communications, Inc.*, Order, 28 FCC Rcd 8973 (Telecom Access Pol. Div. 2013) (Out of \$249k in disbursed support, it was appropriate for USAC to recover discounted cost of portion of equipment that was not installed, operational or in use).

DECLARATION

1. My name is Thomas Rachels. I am the Chief Financial Officer for Ben Hill County Schools ("Ben Hill"), a position that I have occupied since July 1, 2013, at which time I also became responsible for Ben Hill's technology program. I am familiar with the issues surrounding E-Rate Program Funding Request No. 2366566 for Funding Year 2012. More specifically, I am familiar with the issues raised by (a) the Notification of Improperly Disbursed Funds Recovery Letter, dated February 17, 2016 ("Recovery Letter"), seeking the recovery of \$130,439.61 from Ben Hill, (b) Ben Hill's April 15, 2016 appeal thereof to USAC and (c) USAC's May 2, 2016 denial of that appeal..

2. I have reviewed the Request For Review ("Request") to which this Declaration is attached. The Request was prepared pursuant to my instruction and oversight. I hereby declare under penalty of perjury that the factual representations therein relating to Ben Hill, the E-Rate application process for FRN 2366566, the Payment Quality Assurance Review and the VBrick System, including the 40 set top boxes are true and correct.

A handwritten signature in black ink, appearing to read "Thomas Rachels", is written over a horizontal line.

Dated: June 22, 2016

Name: Thomas Rachels

Title: Chief Financial Officer

ATTACHMENT I

April 15, 2016

VIA EMAIL AND OVERNIGHT COURIER

**LETTER OF APPEAL
Schools and Libraries Program – Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685**

**Re: LETTER OF APPEAL OF BEN HILL COUNTY SCHOOLS – BEN 127518 – FCC Form
471 No. 868208 – Funding Year 2012 – Funding Request No. 2366566 – FCC
Registration Number 0012096269.**

Dear Schools and Libraries Correspondence Unit:

In accordance with 47 C.F.R. § 54.719(a), Ben Hill County Schools ("Ben Hill" or "County") hereby partially appeals the Notification of Improperly Disbursed Funds Recovery Letter, dated February 17, 2016 ("Recovery Letter"), relating to Funding Request Number 2366566 (FCC Form 471 8688208) for Funding Year 2012.¹ Specifically, as explained herein, Ben Hill is prepared to reimburse a portion of the amount for which USAC seeks reimbursement, but appeals reimbursement of the balance of the amount sought by USAC.

In support of its Appeal, Ben Hill sets forth the following:

BACKGROUND

A. The Application, Commitment And Project Completion

By FCC Form 470 (80793000102782) dated February 13, 2012, the County sought as Priority 2 Internal Connections one VBrick Video Distribution System ("VBrick System" or "System") for installation at Ben Hill County Elementary School ("School"). The County's Form 471 No.868208, as finalized, included a total funding pre-discount amount of \$152,572.60 for the System. Qualifying for a 90% discount, the final funding commitment request was \$137,315.34; as a result, the County's 10% share of the overall project cost was \$17,366.66. The relevant Item 21 Attachment reflected that the pre-discount amount for the System included \$27,240.00

¹ This Letter of Appeal ("Appeal") is timely filed within 60 days after the date of the Recovery Letter in accordance with 47 C.F.R. §54.720. A copy of the Recovery Letter is Exhibit 1.

VIA EMAIL AND OVERNIGHT COURIER

(\$24,516.00 post-discount) for 40 multi-format set top boxes for decoding video available through the System so that it could be displayed on "plasmas, LCDs, and televisions" ("STB").

On July 25, 2013, USAC approved a funding commitment in the amount of the final request, with the last allowable date for completion of installation of September 30, 2014. The County timely filed its Form 486 Notification reporting an earliest service start date of August 1, 2014. Delivery, installation and operational status of the VBrick System by Micro Technology Consultants, Inc. ("MTC") were completed at the School by September 30, 2014. The County paid its non-discounted share of the project cost in full.

B. The VBrick System and the Role of the Set Top Boxes

The approved VBrick System allows the delivery of stored educational video content to each classroom and public areas of the School library. Students and faculty can view the content on desktop computers and other in-classroom viewing technologies, such as whiteboards, connected directly to the School's Local Area Network ("LAN"). The System also facilitates delivery of the same video content to any wireless device connected to the LAN, including laptop computers and personal electronic devices. Upon the System's installation, the necessary channels and video materials were loaded to allow access to the video content and it became operational. Ben Hill's use of the System for such in-classroom educational purposes continues today.

The STBs, which are movable devices that need not be permanently installed, but remain available to be connected on an as-needed basis, would allow the connection to the System of non-networked devices, such as television sets or projectors located in the individual classrooms. The STBs are a peripheral device to the System. The connection of the STBs to non-networked televisions or projectors is not required for the System to function and serve the primary purpose for which it was sought and approved as an eligible Priority 2 Internal Connection – delivering video content to the classroom.

C. The Payment Quality Assurance Review

On January 28, 2015, USAC initiated a Payment Quality Assurance ("PQA") program review of SLC Invoice No. 2115218, which had been disbursed to MTC on December 18, 2014, in the amount of \$137,315.34 (Case ID: SL-2104-12-Case-405) for the System. Ben Hill cooperated fully with the review, including the April 15, 2015 onsite visit by PQA auditors. During that visit, the auditors found that the 40 STBs in inventory were not located in the classrooms and connected to devices using the VBrick System. Upon further PQA inquiry regarding the STBs, in January of 2016 Ben Hill explained the non-essential, optional role of the devices in the operation of the System.² The Recovery Letter followed.

D. The Recovery Letter Explanation

The Disbursed Funds Recovery Explanation is as follows:

² See Exhibit 2.

VIA EMAIL AND OVERNIGHT COURIER

"During a Payment Quality Assurance (PQA) review, it has been determined that funds were improperly disbursed for this funding request. The equipment for which you requested discounts has not been utilized in accordance with program rules. FCC rules require that applicants have secured all necessary resources to make effective use of the equipment and that the equipment is utilized for educational purposes. 40 Set top boxes-8000-0113/VB-IPR-WM SET TOP BOX were not in use and due to set top boxes not being installed, it was determined that the remaining parts of the VBRICK video streaming equipment cannot be properly utilized. Since a review has revealed that equipment has not been utilized according to program rules, USAC will seek recovery of all funds improperly disbursed that are associated with the equipment not being utilized. Accordingly, USAC will seek recovery of \$130,439.61 of improperly disbursed funds from the applicant."

ARGUMENT

A. Ben Hill Will Reimburse E-Rate Program Support For Set Top Boxes.

The County concedes that the STBs were not deployed for the purpose for which they were ostensibly to be used – to connect televisions or projectors in individual classrooms to the VBrick System. The STB's are currently located in the School's Media Center and could be "checked out" in the event that they were needed, were non-networked devices like individual televisions in the classroom to be deployed.

Ben Hill's use of the STBs in this fashion is not the result of any intentional violation of the E-Rate Program rules. The County's plans for in-classroom viewing technologies evolved and a decision was made to install whiteboards in the classrooms, as opposed to continuing to rely on older technologies. All classrooms contain these more up-to-date alternatives. As a result, the STBs ultimately were not required to allow the VBrick System to perform its functions in the classroom – the educational video content from the System could be delivered through network connected devices. Clearly, there could have been closer coordination between the County's technology deployment decisions and the acquisition of peripheral devices (e.g., the STBs) for the VBrick System. During the year between the grant of the funding commitment in July of 2013 and the installation of the VBrick System starting in August of 2014, there were personnel transitions at Ben Hill and the change from an internal technology department to an outside vendor that affected this issue.

Again, although the STBs are still available on an "as-needed" basis, based on the technologies now used in the School's classrooms Ben Hill is prepared to reimburse USAC the full amount of the disbursed support related to the 40 STBs (\$24,516.00).

B. Ben Hill Cannot Be Required To Reimburse E-Rate Support For Operating VBrick System

However, USAC goes further and seeks to an additional \$105,923.61 (the bulk of the funds disbursed under the FRN for the VBrick System) on the grounds that absent the use of the STBs "the remaining parts of the VBRICK video streaming system cannot be properly utilized." This conclusion is a false premise and does not reflect reality.³

³ See Exhibit 2.

VIA EMAIL AND OVERNIGHT COURIER

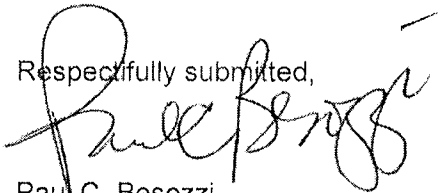
Since the System's timely installation, any device able to be connected to the County's LAN network in the classroom and elsewhere (e.g., whiteboards, desktop computers, laptop computers, personal electronic devices) have been able to use – and have been using – the System to stream video when needed, exactly as intended and approved as part of the project. Thus, the System has in fact been used in accordance with E-Rate Program rules and as originally intended, even though the STBs were not installed with in-classroom televisions or projectors.

Under such circumstances, it is appropriate for USAC to recover the E-Rate Program support relating to the unused STBs (i.e., the amount "associated with the equipment not being utilized"). However, Ben Hill respectfully submits that it is not appropriate or required by the E-Rate Program rules to recover support relating to equipment purchased, installed and being used as planned. *In the Matter of Request for Review of a Decision of the Universal Service Administrator by Kearney Public Schools*, Order, 27 FCC Rcd 6194, 6196, ¶ 4 (Telecom Access Pol. Div. 2012), the FCC ruled that Kearney, in the face of a COMAD letter, was entitled to retain E-Rate Program support for approved switching equipment that Kearney had in fact purchased and installed, while returning funds related to other equipment and support not purchased.⁴ This conclusion is equally applicable to this case regarding the functioning VBrick System versus the STBs. Contrary to the Recovery Letter Explanation, Ben Hill "secured all necessary resources to make effective use of the [VBrick System] equipment and that ... equipment is [being] utilized for an educational purpose."

CONCLUSION

Ben Hill respectfully submits that there is no basis for recovery of any disbursed E-Rate Program support other than the \$24,516.00 associated with the STBs which were not in use. The County is prepared to reimburse USAC that amount. The balance of the amount sought to be recovered (\$105,923.61) should be rescinded and the County should be permitted to retain that amount in full.

Respectfully submitted,



Paul C. Besozzi
Counsel to Ben Hill County Schools

cc: Thomas Rachels
Scott Nutgrass

⁴ See also *In the Matter of Request for Review of a Decision of the Universal Service Administrator by Mercury Communications, Inc.*, Order, 28 FCC Rcd 8973 (Telecom Access Pol. Div. 2013) (Out of \$249k in disbursed support, it was appropriate for USAC to recover discounted cost of portion of equipment that was not installed, operational or in use).

EXHIBIT 1



Universal Service Administrative Company

Schools & Libraries Program

Notification of Improperly Disbursed Funds Recovery Letter
Funding Year 2012: July 1, 2012 - June 30, 2013

February 17, 2016

C. Scott Nutgrass
BEN HILL COUNTY SCHOOLS
2929 Watson Blvd.
Ste 2 #330
Warner Robins, GA 31093

Re: Form 471 Application Number: 868208
Funding Year: 2012
Applicant's Form Identifier: 609127102
Billed Entity Number: 127518
FCC Registration Number: 0012096269
SPIN: 143005461
SPIN Name: Micro Technology Consultants, Inc.
Service Provider Contact Person: Charles Smith

Our routine review of Schools and Libraries Program (SLP) funding commitments has revealed certain applications where funds were disbursed in violation of SLP rules.

In order to be sure that no funds are used in violation of SLP rules, the Universal Service Administrative Company (USAC) must now recover these improper disbursements. The purpose of this letter is to inform you of the recoveries as required by SLP rules, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the Program rule violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error.

This is NOT a bill. The next step in the recovery of improperly disbursed funds process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see <https://www.fcc.gov/encyclopedia/red-light-frequently-asked-questions>.

TO APPEAL THIS DECISION:

If you wish to appeal the Notification of Improperly Disbursed Funds Recovery decision indicated in this letter to USAC, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Improperly Disbursed Funds Recovery Letter and the Funding Request Number(s) (FRNs) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Funding Disbursement Recovery Report that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

We strongly recommend that you use one of the electronic filing options. To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org or submit your appeal electronically by using the "Submit a Question" feature on the USAC website. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Program - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

For more information on submitting an appeal to USAC, see "Appeals" in the "Schools and Libraries" section of the USAC website.

FUNDING DISBURSEMENT RECOVERY REPORT

On the pages following this letter, we have provided a Funding Disbursement Recovery Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from the application for which recovery is necessary. See the "Guide to USAC Letters" posted at <http://www.usac.org/sl/tools/samples.aspx> for more information on each of the fields in the Report. USAC is also sending this information to the service provider for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on these FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action. The Report explains the exact amount the applicant is responsible for repaying.

Schools and Libraries Program
Universal Services Administrative Company

cc: Charles Smith
Micro Technology Consultants, Inc.

Funding Disbursement Recovery Report
for Form 471 Application Number: 868208

Funding Request Number:	2366566
Services Ordered:	INTERNAL CONNECTIONS
SPIN:	143005461
Service Provider Name:	Micro Technology Consultants, Inc.
Contract Number:	60912X01
Billing Account Number:	
Site Identifier:	127518
Funding Commitment:	\$137,315.34
Funds Disbursed to Date:	\$137,315.34
Funds to be Recovered from Applicant:	\$130,439.61

Disbursed Funds Recovery Explanation:

During a Payment Quality Assurance (PQA) review, it has been determined that funds were improperly disbursed for this funding request. The equipment for which you requested discounts has not been utilized in accordance with program rules. FCC rules require that applicants have secured all the necessary resources to make effective use of the equipment and that the equipment is utilized for an educational purpose. 40 Set top boxes -B000-0113/VB-IPR-WM SET TOP BOX were not in use and due to set top boxes not being installed, it was determined that the remaining parts of the VBRICK video streaming equipment cannot be properly utilized. Since a review has revealed that equipment has not been utilized according to program rules, USAC will seek recovery of all funds improperly disbursed that are associated with the equipment not being utilized. Accordingly, USAC will seek recovery of \$130,439.61 of improperly disbursed funds from the applicant.

EXHIBIT 2

RE: Form 471 868208 Inquiry, 01/05/2016

Reviewer: Warren Fitch

Applicant Name: BEN HILL COUNTY SCHOOLS

FCC Form 471 Application Number(s): 868208

Utilization Statement

Ben Hill County Elementary School utilizes the (8000-0113/VB-IPR-WM SET TOP BOX) items on an as needed, where needed basis. These items are designed to be mobile devices for use on non-networked devices such as classroom televisions or projectors. Originally, the items were utilized on classroom televisions but that use has dwindled with the installation of classroom Whiteboards. Because the Whiteboards are networked devices, the delivery of video for classroom instruction is delivered through the network directly to the Whiteboard. With (55) classrooms, the use of (40) set-top boxes as mobile devices, was a more cost effective solution than one per classroom. The use of the set-top boxes are limited at this time but they are housed in the media center for use by classroom instructors as needed. Teachers are free to pick one up for use anytime.

The statement of system non-functionality, see (USAC_ Payment Quality Assessment Case Closed - SL-2014-12-Case-405.pdf), is a misunderstanding of the video distribution system. The items in question, (8000-0113/VB-IPR-WM SET TOP BOX), are optional components of the system and not required for functionality. The system delivers video on demand across the IP LAN to any network device. The SET-TOP box is used to connect non-networked devices so that network video can be available.

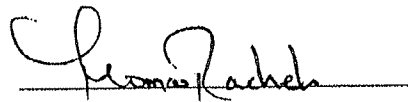
//s//

C. Scott Nutgrass
Universal Funding Consultants, Inc.
Agent of Record for Ben Hill County School District
Tel: 866.490.3688
Fax: 877.507.8465
scott@fundingtechnology.com

DECLARATION

1. My name is Thomas Rachels. I am the Chief Financial Officer for Ben Hill County Schools ("Ben Hill"), a position that I have occupied since July 1, 2013, at which time I also became responsible for Ben Hill's technology program. I am familiar with the issues surrounding E-Rate Program Funding Request No. 2366566 for Funding Year 2012. More specifically, I am familiar with the issues raised by the Notification of Improperly Disbursed Funds Recovery Letter, dated February 17, 2016 ("Recovery Letter"), seeking the recovery of \$130,439.61 from Ben Hill.

2. I have reviewed the Letter of Appeal of the Recovery Letter to which this Declaration is attached. The Letter of Appeal was prepared pursuant to my instruction and oversight. I hereby declare under penalty of perjury that the factual representations therein relating to Ben Hill, the E-Rate application process for FRN 2366566, the Payment Quality Assurance Review and the VBrick System, including the 40 set top boxes are true and correct.

A handwritten signature in black ink, appearing to read "Thomas Rachels", written over a horizontal line.

Dated: April 15, 2016

Name: Thomas Rachels

Title: Chief Financial Officer

ATTACHMENT II

Paul C. Besozzi
Squire Patton Boggs (US) LLP
2550 M Street, NW
Washington, DC 20037

Billed Entity Number: 127518
Form 471 Application Number: 868208
Form 486 Application Number:



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2012-2013

May 02, 2016

Paul C. Besozzi
Squire Patton Boggs (US) LLP
2550 M Street, NW
Washington, DC 20037

Re: Applicant Name: BEN HILL COUNTY SCHOOLS
Billed Entity Number: 127518
Form 471 Application Number: 868208
Funding Request Number(s): 2366566
Your Correspondence Dated: April 15, 2016

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2012 Notification of Improperly Disbursed Funds Recovery Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2366566
Decision on Appeal: **Denied**
Explanation:

- The record shows that during a Payment Quality Assurance (PQA) review, it was determined that funds were improperly disbursed for this funding request. The equipment for which you requested discounts has not been utilized in accordance with program rules. FCC rules require that applicants have secured all the necessary resources to make effective use of the equipment and that the equipment is utilized for an educational purpose. 40 Set top boxes -8000-0113/VB-IPR-WM SET TOP BOX were not in use and due to set top boxes not being installed, it was determined that the remaining parts of the VBRICK video streaming equipment cannot be properly utilized. Since a review has revealed that equipment has not been utilized according to program rules, USAC will seek recovery of all funds improperly disbursed that are associated with the equipment not being utilized. Accordingly, USAC will seek recovery of \$130,439.61 of

improperly disbursed funds from the applicant. In your appeal, you did not demonstrate that USAC's decision was incorrect. Consequently, your appeal is denied.

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: C. Scott Nutgrass

ATTACHMENT III

DECLARATION

1. My name is Matt Smith. I serve as the Technology Director for Ben Hill County Schools ("Ben Hill" or "County") via the County's contract with VARtek Services, Inc., a position that I have occupied since June 3, 2013, at which time I also became responsible for Ben Hill's daily technology support. I am familiar with the issues surrounding E-Rate Program Funding Request No. 2366566 for Funding Year 2012. More specifically, I am familiar with the issues raised by (a) the Notification of Improperly Disbursed Funds Recovery Letter, dated February 17, 2016 ("Recovery Letter"), seeking the recovery of \$130,439.61 from Ben Hill, (b) Ben Hill's April 15, 2016 appeal of the recovery Letter to USAC and (c) USAC's May 2, 2016 denial of that appeal.

2. The VBrick system at Ben Hill has been and is in use and fulfilling its core function of providing network-based video storage and streams. District employees, especially Media Specialists, frequently access and use the system, requesting support as needed. Support has included both technical issue resolution and training on multiple occasions. The server systems, which are the main delivery platform for the VBrick system, are housed in the district data center alongside every other critical technology back-end system. Photos of some of the key operational components of the installed VBrick system are Exhibit 1 hereto.

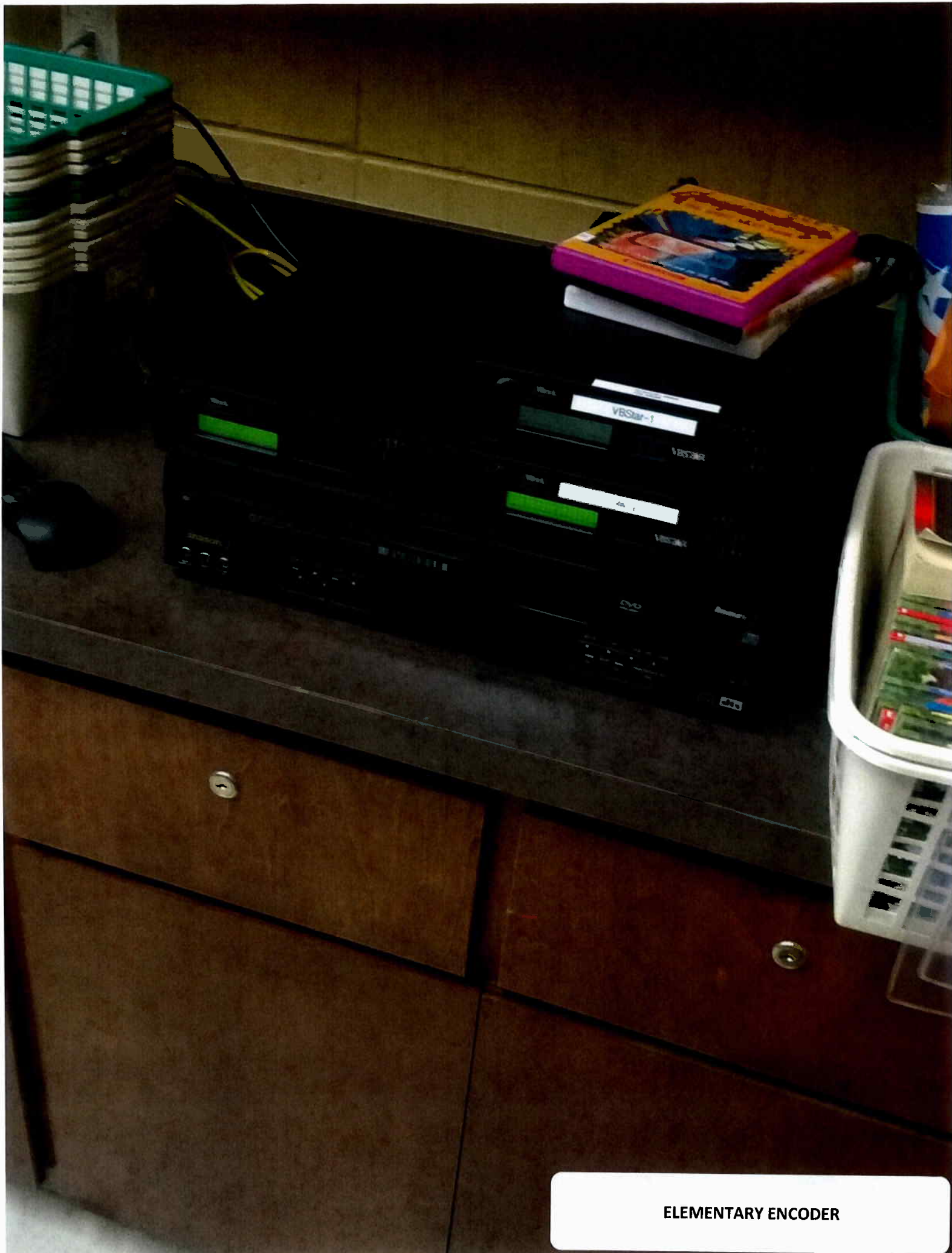
3. I hereby declare under penalty of perjury that the foregoing factual representations and statements relating to Ben Hill and the use of the VBrick system are true and correct.



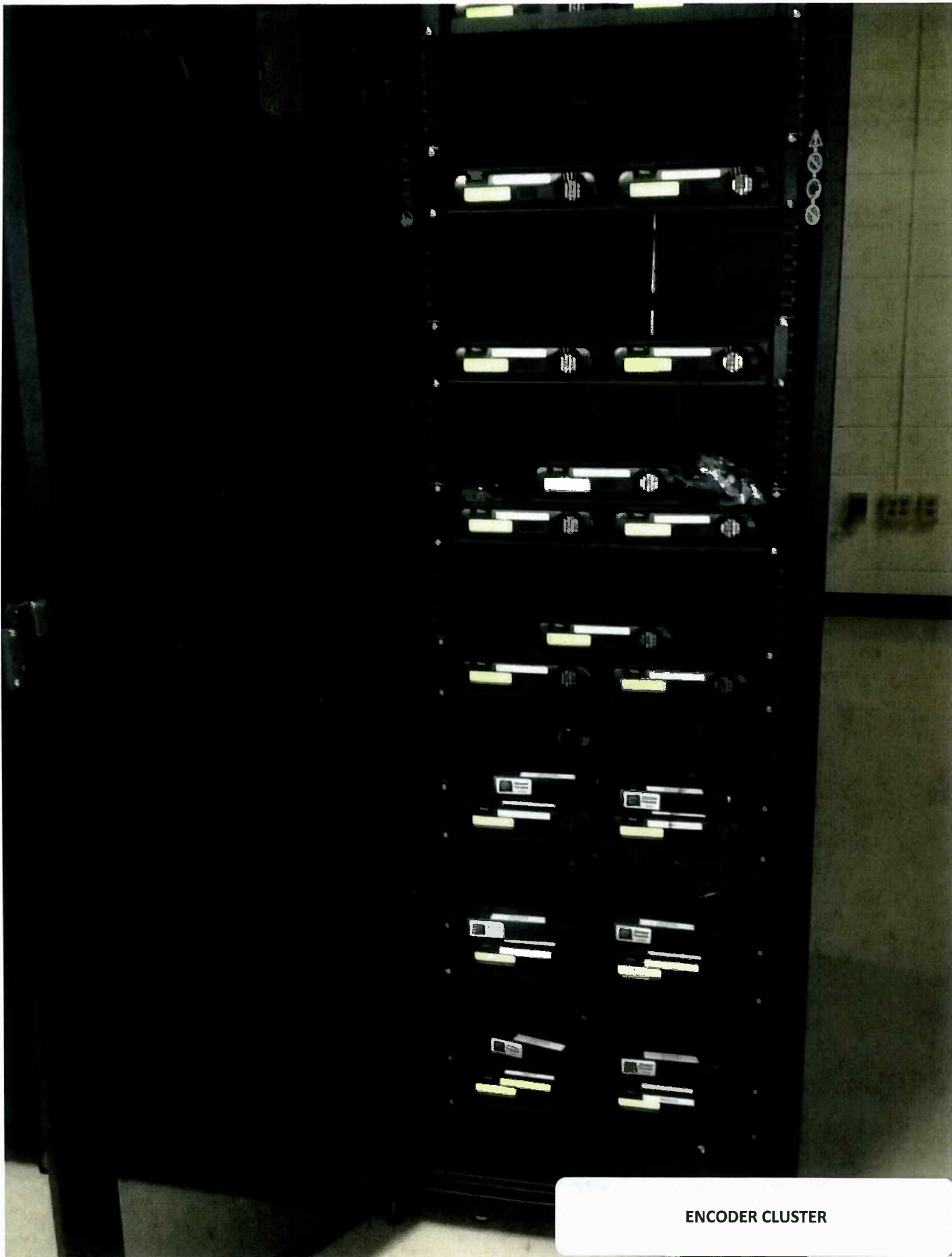
Dated: June 22, 2016

Name: Matt Smith
Technology Director, VARtek Services, Inc.

EXHIBIT 1



ELEMENTARY ENCODER



ENCODER CLUSTER

SCHOOLTUBE

POWERED BY

VBrick

Ben Hill County Schools

SEARCH

All Media Library

All

MEDIA LIBRARY LIVE MEDIA CHANNEL GUIDE SCHEDULING MORE TOOLS

welcome: administrator Help Logout

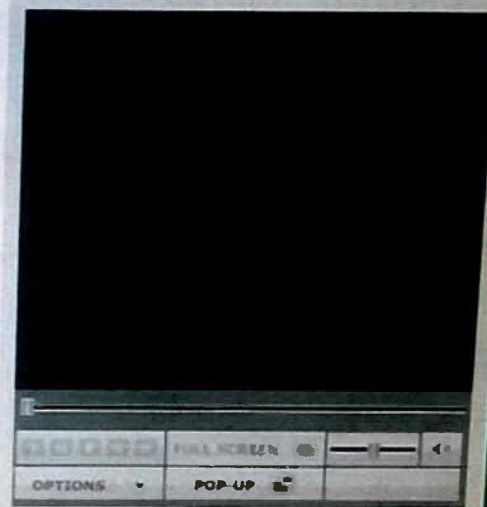
Current Folder /
Date Range: All
Tags: None
Clear Filters

Filter By Folder Filter By Date

Show 5 per page

Page 1 Showing 1 of 74

Title	Date	
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A Streetcar Named Desire 88W 122Min PG-13	Oct 27 2015 10:24 AM	Tags:
A Cars Life Sparkys Big (...)	Apr 08 2015 5:31 PM	Tags:
Action with Fractions- M...	Apr 08 2015 5:31 PM	Tags:
Actionable_Assessment	Apr 08 2015 5:31 PM	Tags:

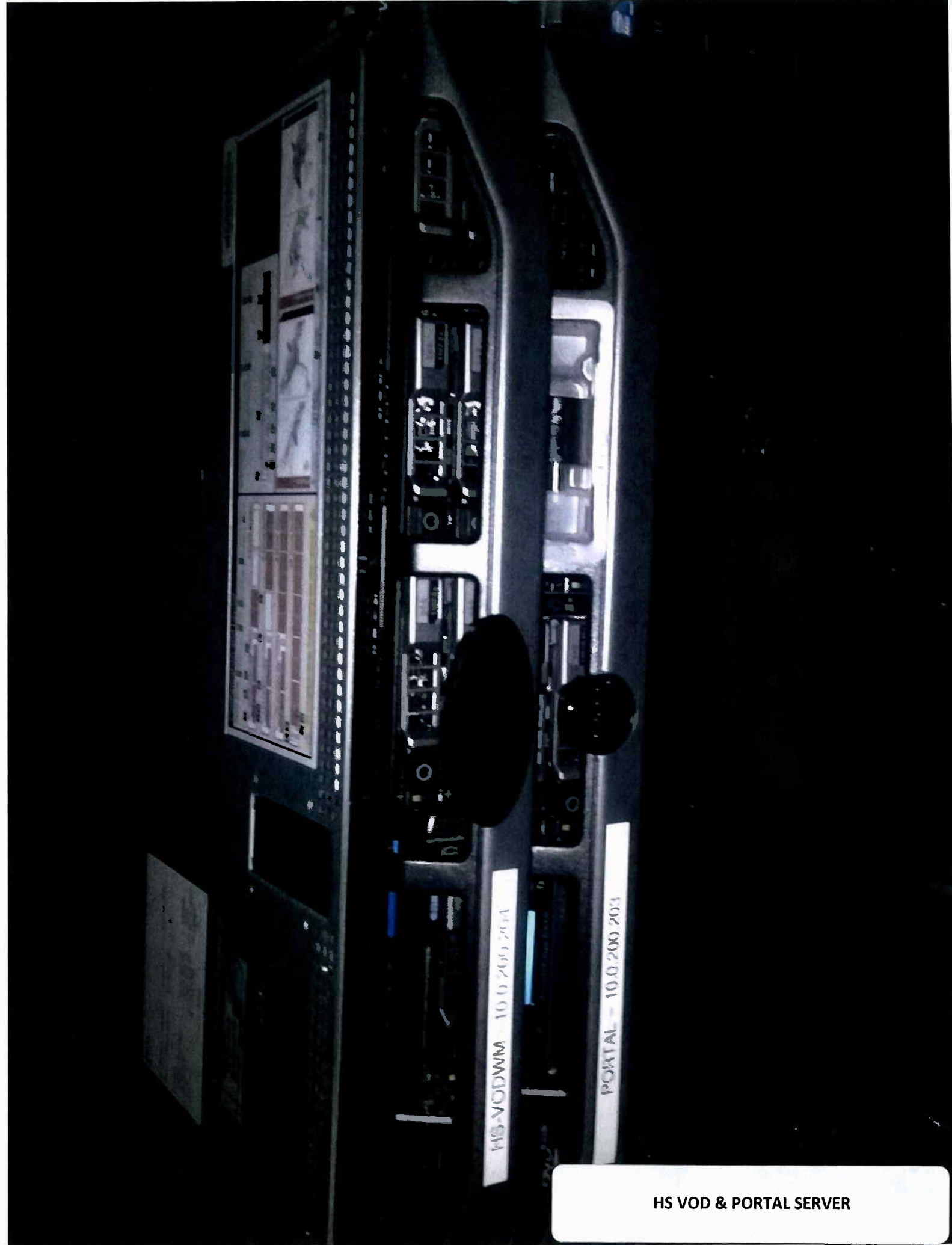


Hide Info

Media Library / Live Media / Channel Guide / Scheduling / Playlist / Help / Logout



WEB PORTAL



HS VOD & PORTAL SERVER

CERTIFICATE OF SERVICE

I, Paul C. Besozzi, certify on this 22nd day of June 2014 a copy of the foregoing "Request For Review" has been served via electronic mail or first class mail, postage pre-paid, to the following:

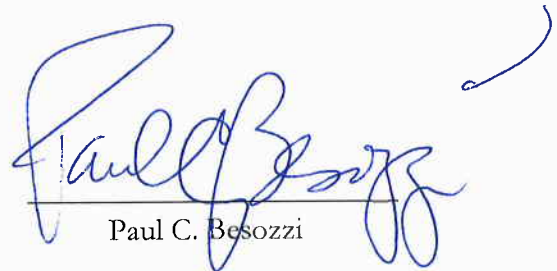
Matthew DelNero
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Letter of Appeal
Schools and Libraries Division-
Correspondence Unit
30 Lanidex Plaza West
P.O. Box 685
Parsippany, NJ 07054-0685
appeals@sl.universalservice.org



Paul C. Besozzi